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CF 152

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

CIVIL REVISION NO. 23 /2006

APPLICANT : Taukir Dani, Aged about 47 years
Respondent No.1 S/o. Gulam Sarvar Dani, R/o. Kabir Nagar Basna, P.S. and Tahsil Basna, Distt. Mahasamund (C.G.)

VERSUS

RESPONDENT : R 1] Chandagi Ram, Aged about 65 yrs, S/o. Hanu Naik, R/o. Adarsh Nagar, Basna, P.S. and Tahsil Basna, Distt. Mahasamund (C.G.)
Election Petitioner

R 2] Jaijram Sahu, Aged about 50 years S/o. Ghasiram Sahu, R/o. Ward No. 2, Basna, Tahsil Basna, Distt. Mahasamund (C.G.)

R 3] Mohd. Irfan Gigani @ Illu, Aged about 35 years S/o Kuddas Gigani, R/o. Bazar Para, Basna, Tahsil Basna, Distt. Mahasamund (C.G.)

R 4] Girdharilal Dadsena @ Dr. Chhotu, Aged about 45 years, S/o. Ramprasad Dadsena, R/o. Ward No. 13, Tikrapara, Basna, Distt. Basna, Distt. Mahasamund (C.G.)

R 5] Returning Officer, Nagar Panchayat, Basna, Arvind Sharma, Tahsildar, Basna, Tahsil Basna, Distt. Mahasamund (CG)

R 6] District Election Officer, Collector, Mahasamund, Distt. Mahasamund (C.G.)

F.R. No. 433/06
Presented by Shri Vijay Govindhar
dated 15/2/06

Resp. No.2 to 6
respondent/respondents

CIVIL REVISION UNDER SECTION 26(2) OF CHHATTISGARH MUNICIPALITIES ACT 1961 R/W. RULE 19 OF CHHATTISGARH MUNICIPALITIES (ELECTION PETITOIN) RULES, 1962

AFR (5)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CIVIL REVISION NO. 23 OF 2006

APPLICANT/
RESPONDENT NO. 1 : TAUKIR DANI

Vs.

RESPONDENTS/
ELECTIONER PETITIONERS : CHANDAGI RAM AND OTHERS

POST FOR ORDER ON 3rd MAY 2006

Sd/-
Dhirendra Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

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RESPONDENTS/
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APPLICANT BY SHRI MANOJ PARANJPE, ADVOCATE.
RESPONDENTS NO. 1 TO 4 BY SHRI R.K. PANDEY, ADVOCATE.
RESPONDENTS NO. 5 & 6 BY SHRI P.K. VERMA, Sr. ADVOCATE.

ORDER
(PASSED ON 3 /05/2006)

DHIRENDRA MISHRA, J

The applicant has preferred this civil revision under Section 26(2) of Chhattisgarh Municipalities Act, 1961 (hereinafter referred to as 'Act of 1961) r/w Rule 19 of Chhattisgarh Municipalities (Election Petition) Rules, 1962 against the order dated 24.01.2006 passed by learned District Judge, Raipur in Election Petition No. 19/05 and by which the application preferred by the applicant under Order 7 Rule 11 of the C.P.C. for dismissing the election petition preferred by respondent No. 1, has been dismissed.

2. The short question involved for adjudication of this civil revision is that – whether the election Tribunal can condone delay in filing the election petition by extending the benefit of section 14 of the Limitation Act to the election petitioner.

3. The facts necessary for disposal of this revision are that applicant Taukir Dani was declared elected as President of Basna Municipalities (Nagar Panchayat, Basna) and his election was duly notified in the official gazette

dated 26.12.2004. Respondent No.1 Chandagi Ram preferred election petition under section 20 of the Act of 1961 in the Court of First Additional District Judge, Mahasamund. However, the same was returned by the learned first A.D.J., Mahasamund on 16.11.2005 to respondent No. 1 for presenting the same before appropriate Court. Thereafter, the petition was filed in the Court of learned District Judge on 18.11.2005. The applicant moved an application under Order 7 Rule 11 of the C.P.C. r/w section 20(3) of the Act of 1961 (Annexure A-6) mentioning therein that election petition on the face of it is not maintainable as the same has been presented beyond the period of limitation prescribed under section 20(3) of the Act of 1961 and the election Tribunal is not competent to condone delay in filing the election petition. However, the application preferred by the applicant has been rejected by the learned election Tribunal by the impugned order.

4. Learned counsel for the applicant submits that provisions of Limitation Act are not applicable to the election petition proceedings under the Act of 1961 as the Municipalities Act and Rule framed thereunder is a complete and self-contained code like Representation of the People's Act which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.

5. Referring to section 20 of the Act of 1961 it is argued that election petitions are to be filed strictly in accordance with the provision of section 20 of the Act of 1961 on the grounds enumerated under section 22 of the Act and election petition so filed is to be enquired into and disposed of as per procedure under section 23 of the Act and Rules made there under the Act.

6. Relying upon the judgments of Supreme Court reported in **AIR 1969 S.C. 872** in the matter of **K. Venkateswara Rao and another V. Bekkam Narasimha Reddi and others**, reported in **1987 (II) M.P.W.N. Note 158** in the matter of **Kamar Lal Vs. Gore Lal**, and the judgment reported in **1998 (I) M.P.W.N. Note 83** in the matter of **Kishan Singh V. Harveer Singh** it is argued

by learned counsel for the applicant that the provisions of the Limitation Act are not applicable to the election petition.

7. Further relying upon the judgment reported in **1997 (1) JLJ 433** delivered in the matter of **Ashok Barman V. Smt. Sadhana Jain and another** it is argued that provisions of section 20 of the Act of 1961 are mandatory.

8. Referring to Rule 5 and 11 of the Election Petition Rules 1962 it is argued that the procedure to be followed by the election petition Judge and powers of the Judge for the above purpose, has also been elaborately prescribed and thus it is contended that the election Tribunal by condoning delay in filing the election petition with the aid of section 14 of the Limitation Act, has in fact exercised the jurisdiction not vested in it as per the Municipalities Act and the election petition rules framed under the Act.

9. On the other hand, learned counsel for the respondents referring to the impugned order argued that the Court of the District Judge while hearing the election petition as designated authority acts as a Court and therefore, provisions of the Limitation Act are also attracted. It is further argued that respondent No 1 (petitioner therein) bonafidely filed election petition before First A.D.J., Mahasamund within time on 24.01.2005. His petition was entertained and notices were issued to the respondents. The respondents did not raise any objection regarding maintainability of the petition and participated in the proceedings for a considerable period and submitted their reply and objection regarding maintainability of the petition was taken by the applicant at the fag end of the trial and on that objection the election petition was returned for presenting the same before the appropriate authorities. In the aforesaid circumstances, it is evident that the respondents were bonafidely prosecuting the election petition before the Tribunal and therefore, as per provisions of section 14 of the Limitation Act time spent in prosecuting the election petition before the Court of First ADJ has rightly been condoned.

10. Placing reliance on the judgment of S.C. reported in **2000(1) Manisa 20** in the matter of **P. Sarthi Vs. State Bank of India** and the judgment of M.P. High Court reported in **1985 Manisa 283** in the matter of **M.P. State Co-operative Marketing Federation , Bhopal Vs. Union of India and another** it is argued by learned counsel for the respondents that section 14 of the Limitation Act does not speak of only a "Civil Court" but speaks only of a "Court" and therefore, any authority or Tribunal having the trappings of a court would be a "Court" within the meaning of section 14 of the Limitation Act including the designated election Tribunal under the Municipalities Act.

11. I have heard learned counsel for the parties.

12. Before appreciating the arguments advanced by the respective parties, it would be appropriate to refer to relevant provisions of the Municipalities Act for the purposes of controversy involved in this civil revision.

13. Chapter 2 of the Municipalities Act provides for constitution of Municipalities. Section 20 of Chapter 2 refers to election petitions whereas section 22 mentions the grounds for declaring election or (nomination) to be void and section 23 prescribes the procedure to be followed in disposal of the election petition. Election Petition Rules 1962 has been enacted under section 23 of the Act of 1961. Section 24 of the Act of 1961 deals with the orders to be made by the Judge at the conclusion of the trial of election petition. Section 26 (1) of the Act gives finality to the decision of the Judge on the petition whereas section 26(2) provides for the grounds upon which revision can be filed before the High Court against the decision of the election Tribunal. Statutory rules under section 23 of the Act – Municipalities Election Petition Rules 1962 have also been framed. Rule 5 prescribes the procedure to be followed in the election proceedings and Rule 11 prescribes the powers of the Judge enquiring into such petitions. Rule 12 provides for application of the Indian Evidence Act subject to the provisions of the rules and Rule 19 provides for the revision against the decision of the Judge.

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14. Thus from perusal of the provisions of the above mentioned sections and statutory rules framed thereunder it is evident that the Municipalities Act 1961 is a complete and self-contained code. Relevant provisions referred to by the applicant are being reproduced hereinunder;

Sections of the Municipalities Act, 1961

20. Election petitions.- (1) No election or [3][nomination] under this Act be called into question except by a petition presented in accordance with the provisions of this section.

(2) Such petition may be presented on one or more of the grounds specified in Section 22.

(a) by any candidate at such election or [4][nomination]; or

(b) (i) xxxxxxxxxxxxxxxxxx xxxxxxx

(ii) xxxxxxxxxxxxxxxxxxxxxxxxx

(iii) xxxxxxxxxxxxxxxxxxxxxxxxx

to the District Judge, where such election or [2][nomination] is held within the revenue district in which the Court of the District Judge is situate, and in any other case, to the Additional District Judge having the permanent seat of his Court within the revenue district in which such election or nomination is held and if there is more than one such Additional District Judge within the said revenue district, to such one of them as the District Judge may specify for the purpose (hereinafter such District Judge or Additional District Judge referred to as Judge).

(3) No petition presented under sub-section (2) shall be admitted unless

(i) it is presented within thirty days from the date on which the result of such election or [3][nomination] was notified in the Gazette; and

(ii) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Rules of the Municipalities (Election Petition) Rules 1962

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5. Procedure.- Subject to the provision of the Act or of these rules, every election petition shall be enquired into by the Judge, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits;

Provided that it shall only be necessary for the Judge to make a memorandum of the substance of the evidence of any witness examined by him.

11. Powers of the Judge.- For purposes of enquiring into such petitions, the Judge shall have the powers which are vested in a court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters:-

(a) discovery and inspection;
(b) enforcing the attendance of witnesses and requiring the deposit of their expenses;
(c) compelling the production of documents;
(d) examining witnesses on oath;
(e) granting adjournments;
(f) reception of evidence taken on affidavit; and
(g) issuing commissions for the examination of witnesses;

and may summon and examine suo moto any person whose evidence appears to him to be material; and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

15. From a conjoint reading of section 20 sub-section 1, sub-section 2 and sub-section 3, it emerges that the election petition is to be presented strictly in accordance with the provisions of this section which provides that the petition is to be presented by any candidate in such election to the District Judge of the revenue district where such election is held and in any other case, to the Additional District Judge having the permanent seat of his Court within the revenue district in which such election is held and where there are more than

one Additional District Judge within the said revenue district, to such Additional District Judge who has been specified for this purpose by the District Judge.

16. In the instant case admittedly Mahasamund is a separate revenue district having two Additional District Judges with their permanent seats of courts at Mahasamund and none of them was specified as Judge under the Act by the District Judge. The election petition was filed by the respondents in the Court of First Additional District Judge, Mahasamund, however, on objection by the respondents the First Additional District Judge returned the petition presented by the respondents for filing the same before the appropriate Court on 16.11.2005 and the same was presented on 18.11.2005 before the District Judge, Raipur along with an application under 14 of the Limitation Act.

17. Sub-section 3 of section 20 of the Act makes it mandatory that no petition is to be admitted under sub-section 2 by the Tribunal unless it is presented within thirty days from the date on which the result of such election was notified in the Gazette. Thus as per provisions of sub-section 2 of section 20 which is mandatory, the election petitioner could not have filed the election petition in the Court of First Additional District Judge, Mahasamund as the said court was not specified by the District Judge, Raipur as a Judge for the election petition under the Act and the learned Additional District Judge, Mahasamund rightly returned the petition for want of jurisdiction.

18. The next question is - whether the District Judge was justified in condoning the time spent by respondent No. 1 (the election petitioner) in bonafidely prosecuting his election petition in the Court of First Additional District Judge, Mahasamund?

19. The above question has come for consideration before the Supreme Court on number of occasions. Paragraph – 14 of the judgment of the Supreme Court in the matter of K. Venkateswara Rao (supra) is being reproduced hereinunder;

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14. It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation.. But an election petition stands on a different footing. The trial of such a petition and the powers of the Court in respect thereof are all circumscribed by the Act. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless the application thereof has been excluded by any enactment; the extent of such application is governed by Section 29(2) of the Limitation Act. In our opinion however the Limitation Act cannot apply to proceedings like an election petition inasmuch as **the Representation of People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.**

20. In the matter of **Anwari Basavaraj Patil and others, Vs. Siddaramaiah and others** reported in **AIR 1994 S.C. 512** the Supreme Court while dealing with recrimination notice under section 97 of the Representation of the People's Act which was filed beyond the period of 14 days of the commencement of trial with an application under section 5 of the Limitation Act has held that section 5 of the Limitation Act is not applicable to the filing of an election petition. Citing earlier judgments of the Supreme Court and dealing with section 29(2) of the Indian Limitation Act it has been held that "the applicability of these provisions has, therefore, to be judged not from he terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in S. 29(2) of that Act."

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21. In the matter of Kamar Lal (supra) the M.P. High Court while dealing section 20 sub-section 3(i) of the Act of 1961 has held that election petition under the Act presented after 30 days, cannot be entertained as Clause 1 of sub-section 3 of section 20 contains specific bar against entertaining and trying election petitions presented after 30 days and the provisions of section 5 of the Limitation Act are not applicable for condoning the delay.

22. In the judgment reported in 1998 (1) MPWN 83 the M.P. High Court has held that there is a constitutional bar to the entertainment of the disputes in forums other than those provided under the statute and the provisions which are contained in the Adhiniyam of 1993 and the Rules made thereunder are in *para materia* with Representation of the People Act. The writ petition of the election petitioner, whose election petition was dismissed by the Tribunal as barred by limitation, was also dismissed.

23. In the matter of matter of **Lachhman Das Arora Vs. Ganeshi Lal and others** reported in **(1999) 8 SCC 532** it has been held by the Supreme Court in paragraph -7 that "no period for filing of an election petition is described under the Indian Limitation Act. The Act insofar as it relates to presentation and trial of election disputes is a complete code and a special law. The scheme of the special law shows that provisions of Sections 4 to 24 of the Indian Limitation Act do not apply. If an election petition is not filed within the prescribed period of *forty-five days*, Section 86(1) of the Act, which provides that the High Court *shall* dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117, is straightway attracted."

24. In the instant case also as has been mentioned above, section 20 sub-section 1, sub-section 2 and sub-section 3 clearly provides that no petition presented to the designated Tribunal under sub-section 2 shall be admitted unless it is presented within thirty days from the date on which result of such election is notified in the Gazette. It has already been held by referring to various provisions of the special Act that Act is a complete code insofar as it

relates to presentation and trial of election dispute, therefore, section 4 to section 24 of the Indian Limitation Act has no application in the matters of election petition under the Act and it is mandatory for the Tribunal to dismiss any election petition presented beyond the period prescribed under the Limitation Act i.e. 30 days.

25. So far as the judgment of the Supreme Court delivered in the matter of P. Sarthi (supra) relied upon by the learned Tribunal is concerned, the dispute in that case was that the petitioner was removed from the services by the Bank. He preferred appeal before the local Board of the Bank which was rejected and he preferred yet another appeal under Tamilnaidu Shops and Establishment Act which was also rejected by the Dy. Commissioner of Labours (Appeals) on the ground that provisions of Shops and Establishment Act are not applicable to the nationalized bank. Thereafter the petitioner filed a declaratory suit which was rejected by the trial Court on the ground that the suit was barred by law of limitation. However, the appeal preferred against the judgment of the trial Court was allowed and his removal from services was found to be defective. The respondent/Bank preferred second appeal and that was allowed by the Madras High Court and the suit of the petitioner was held to be barred by law of limitation and in the aforesaid circumstances, the petitioner preferred appeal before the Supreme Court and the same was allowed with a finding that the Court of Dy. Commissioner of Labours (Appeals) is a Tribunal competent to hear and decide the appeals and as such is a Court within the meaning of section 14 of the Limitation Act and therefore, the petitioner was entitled for exemption of the period spent by him in prosecuting the departmental appeal and the appeal preferred before the Labour Commissioner. However, in the instant case the dispute relates to election petition under the Municipalities Act which is a complete code insofar as it relates to presentation and trial of election disputes and therefore, the provisions of sections 4 to 24 of the Indian Limitation Act has not application in the instant case as held in Lachhama Arora's case.

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26. On the basis of aforesaid discussions, this Court is of the considered opinion that the election Tribunal by extending benefit under Section 14 of the Limitation Act condoning the delay in filing the election petition, has exercised the jurisdiction not vested in it under the Act of 1961.

27. In the result, the revision is allowed, the impugned order passed by the Tribunal rejecting the application under Order 7 Rule 11 of the C.P.C. preferred by the applicant is illegal and the same is accordingly set aside.

Sd/-
Dhirendra Mishra
Judge